

Exhibit 3

*State of California ex. rel. Ven-A-Care of the Florida Keys, Inc. v.
Abbott Laboratories, Inc., et al.*

Exhibit to the Declaration of Nicholas N. Paul in Support of Plaintiffs' Motion for Summary
Judgment as to Defendant Mylan

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NO. D-1-GV-07-001259

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
ex rel.)
VEN-A-CARE OF THE)
FLORIDA KEYS, INC.,)
)
Plaintiffs,)
)
VS.) TRAVIS COUNTY, TEXAS
)
SANDOZ, INC. f/k/a GENEVA)
PHARMACEUTICALS, INC.,)
NOVARTIS PHARMACEUTICAL)
CORP., NOVARTIS AG, EON)
LABS, APOTHECON, INC.,)
)
MYLAN PHARMACEUTICALS, INC.,)
MYLAN LABORATORIES, INC.,)
UDL LABORATORIES, INC.)
)
TEVA PHARMACEUTICALS USA,)
INC., f/k/a LEMMON)
PHARMACEUTICALS, INC.,)
COPLEY PHARMACEUTICALS,)
INC., IVAX PHARMACEUTICALS,)
INC., SICOR PHARMACEUTICALS,)
INC., TEVA NOVOPHARM, INC.,)
and TEVA PHARMACEUTICAL)
INDUSTRIES, LTD.)
Defendants.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

HARRY ADAM KORMAN

MARCH 25TH, 2009

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 IN RE: PHARMACEUTICAL)
4 INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
5 PRICE LITIGATION) Master File No.
6) 01-12257-PBS
7)

8 THIS DOCUMENT RELATES TO:)
9) Judge Patti B. Saris
10 State of California, ex rel.)
11 Ven-A-Care v. Abbott) Magistrate
12 Laboratories, Inc., et al.) Judge Marianne Bowler
13 Cause No. 03-cv-11226-PBS)
14)

15 *****

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF MASSACHUSETTS

18 IN RE: PHARMACEUTICAL)
19 INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
20 PRICE LITIGATION) Civil Action No.
21) 01-CV-12257-PBS
22)

23 THIS DOCUMENT RELATES TO:)
24) Judge Patti B. Saris
25 State of Iowa v. Abbott)
Laboratories, et al., S.D.)
Iowa Case No. 07-CV-00461)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Master File No.
01-CV-12257-PBS)
Subcategory No.
03-10643)

City of New York, et al., v.) Judge Patti B. Saris
Abbott Laboratories, et al.,)
Civil Action No. 04-cv-06054,)
et al.)

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1 Q. (BY MR. PIERCE) -- to arrive at that price,
2 that number?

3 MR. ESCOBAR: Objection for the form.

4 THE WITNESS: Again, it -- it solely to
5 me means that it is a data point, period.

6 Q. (BY MR. PIERCE) We're going to establish
7 here in a little bit with exhibits, but you're one of
8 the people that have set and has responsibility for
9 AWP for Mylan in the past, correct?

10 A. I -- I have -- I have had responsibility to
11 establish a AWP for a product indirectly, yes.

12 Q. And that's a dollar figure, is it not?

13 A. I view it as a data point.

14 Q. And it's got a dollar sign next to it when
15 you established an AWP on many occasions, does it not?

16 A. It -- it may have a dollar sign next to it.

17 Q. Is it a price, in your experience, that
18 anyone has ever paid for a Mylan product?

19 MR. ESCOBAR: Objection for the form.

20 THE WITNESS: I -- I can't answer if
21 anyone has ever paid that price.

22 Q. (BY MR. PIERCE) Is it a price, to your
23 knowledge, that has been averaged that any retail
24 pharmacy has purchased a Mylan product from a
25 wholesaler?

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1 MR. ESCOBAR: Objection for the form.

2 THE WITNESS: Again, I -- I don't know
3 that it is a average of a price that a retailer has
4 paid. I don't have that information of what every
5 product was sold for.

6 Q. (BY MR. PIERCE) So when you set AWP's for
7 Mylan Pharmaceuticals in the past, let's make it
8 abundantly clear, you did not have in front of you
9 data of wholesale prices being paid by retail
10 pharmacies and average those prices to determine the
11 AWP, did you?

12 A. When -- when setting an AWP, we had -- I
13 would -- I would believe in almost every case had
14 never sold the product prior to that so I would have
15 had no reference point of looking at a prior sale for
16 that purpose.

17 Q. And what would have been the purpose, when
18 you were setting AWP's for Mylan, in doing so?

19 A. Our -- our purpose in setting an AWP for
20 Mylan was to assure that our product was recognized as
21 a generic product within the marketplace.

22 Q. And is that what you're referring to -- I've
23 heard that the price compendiums, the -- the
24 publishing companies like First DataBank, if you want
25 to be labeled a generic, your AWP must be more than

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1 ten percent less than the brand AWP.

2 A. I believe it's -- it's -- it's our belief
3 that you must be at least 10.1 percent less than the
4 brand to carry a generic designation.

5 Q. Is there any other criteria you use in
6 setting the AWP other than that?

7 A. That's the primary -- when we set an AWP,
8 that's the primary criteria that we utilize.

9 Q. Is there any other criteria you utilize for
10 setting AWP other than that, so that it would be
11 characterized as a generic for such pricing
12 compendiums as First DataBank?

13 MR. ESCOBAR: Objection for the form.

14 THE WITNESS: Again, when -- when we
15 establish an AWP, that is the criteria that we use.
16 That is the sole criteria.

17 Q. (BY MR. PIERCE) Sole criteria?

18 A. When -- yes, sir.

19 Q. Okay. Does it have anything to do with you
20 wanting, on behalf of your employer, Mylan, to
21 increase the reimbursement and, therefore, the
22 profitability of your customer retail pharmacies?

23 A. No, sir.

24 Q. Okay. Do you -- you manipulate the AWP on
25 behalf of Mylan, or have you done so in the past, to

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1 company?

2 A. UDL was started in, I believe, 1980 in
3 Rockford, Illinois.

4 Q. And I don't think Mr. Pierce asked you that,
5 so can you just tell us generally what the business of
6 UDL is?

7 A. Sure. UDL primarily is a repackager of
8 pharmaceuticals from a number of different
9 manufacturers and puts them into a blister pack, which
10 is called unit dose, and that's used to deliver
11 medication in hospitals around the U.S.

12 Q. Now, in the course of the questioning there
13 -- there was reference to generic and to brand
14 companies and generic and brand products.

15 Can you just tell the ladies and
16 gentlemen of the jury: Is Mylan's business primarily
17 to manufacture and sell generic pharmaceutical
18 products?

19 A. That -- that is Mylan's -- the vast majority
20 of all of Mylan's sales are generic pharmaceuticals.

21 Q. And is that -- how would you characterize in
22 terms of the level of competition that exists in the
23 business that Mylan is in?

24 A. I think we go on record publicly quite often
25 that we are in one of the most hypercompetitive

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1 marketplaces that -- that are out in the business
2 community.

3 Q. And what does that mean from a day-to-day
4 basis in terms of competition and from your standpoint
5 in how the business runs on a day-to-day basis?

6 A. It -- it means that, you know, we -- we
7 continue to have a large number of competitors from
8 around the world and that the pricing on our products
9 is ever changing. In most cases, from a Mylan
10 perspective of what Mylan makes, is those prices are
11 declining and in -- in a downward trend.

12 Q. And why is it that, as a general proposition,
13 generic prices over a period of time decline?

14 A. You know, I think it really kind of hits
15 twofold. You know, generic utilization is often
16 predicated on -- on having prices lower than the brand
17 name companies, and it's driven down because, you
18 know, vast number of competitors go to our customers
19 and everyone is bidding for the same product and --
20 and, quite frankly, that can happen on a daily basis
21 and quite often does.

22 Q. When -- when you talk about a generic
23 pharmaceutical product that's competing with a brand
24 pharmaceutical product, is there any difference in
25 terms of the quality?